**TERMS AND CONDITIONS OF SALE**

**YOUR PARTICULAR ATTENTION IS DRAWN TO THE PROVISIONS OF CLAUSE 10**

These terms and conditions shall apply to the exclusion of any other terms that the Buyer (as defined below) may seek to impose.

1. **Definitions**

“Applicable Law” means the laws of England and Wales;

“Buyer” means the individual or entity identified in the Confirmation, and which shall jointly and severally include the vessel supplied, her owners and/or managers and charterers;

“Confirmation” means a written confirmation from the Seller confirming the Product(s) to be delivered to the Buyer and to be issued after acceptance of a quotation by the Buyer in accordance with clause 2(a);

“Contract” means the contract between the Seller and the Buyer for the sale and purchase of the Products in accordance with the conditions set out herein;

“Product” means the marine fuels, oils lubricants or other goods and/or services described in the Confirmation;

“Seller” means OilChart UK Limited, trading as OilChart Offshore;

“Working Day” means a day other than a Saturday, Sunday or a public holiday in England;

“Working Hours” means the hours of 8am to 4pm UK Time on a Working Day;

“VAT” means value added tax applicable in the United Kingdom; and

“Vessel” means any vessel or container nominated in the Confirmation and which is to receive the Product(s).

1. **Application**
   1. No quotation for the supply of Product(s) shall become binding upon the Seller until such time as it has been accepted and confirmed by the Buyer in writing and in which case these conditions shall apply.
   2. All quotations are exclusive of VAT and any applicable sales taxes, unless expressed otherwise. Any VAT and/or sales taxes are for the Buyer’s account, unless stated otherwise in the Confirmation.
   3. These conditions shall apply to the sale of all goods and services by the Buyer and/or any associated company, representative or agent.
2. **Quality**
   1. The nomination of the quality, quantity and delivery method of the Product(s) shall be at the Buyer’s sole responsibility.
   2. Except as expressly stated herein the Seller excludes, to the fullest extent permitted pursuant to the Applicable Law, any implied representations or warranties as to the quality of the Product(s) including without limitation section 13 to 15 of the Sale of Goods Act 1979.
   3. The quality of the Product(s) shall correspond to the Confirmation, subject always to a tolerance allowance of 10%.
3. **Delivery**
   1. The time of delivery given by the Seller in the Confirmation is an approximate time of delivery only.
   2. The Buyer shall give written notice to the Seller not less than 3 Working Days prior to delivery of the relevant Vessel’s readiness to take receipt of the Product(s). Such notice shall be given during normal Working Hours, outside of which the notice will be deemed received at 8am GMT on the next Working Day.
   3. When giving the notice of readiness in accordance with clause 4(b) the Buyer shall notify the Seller of the precise location of where the Vessel shall be at the time of delivery together with any particular requirements in order to allow an efficient delivery to occur.
   4. The Buyer shall immediately notify the Seller in the event of the Vessel’s delay and the Buyer shall be responsible for any reasonably incurred losses suffered by the Seller as a result thereof.
   5. The Buyer shall ensure that the Vessel is safely afloat and easily accessible at the time of delivery in order to allow safe and efficient delivery of the Product(s). The Buyer shall provide all necessary assistance to the Seller in order to allow delivery.
   6. The Buyer shall be responsible for the connection between the Sellers’ delivery hoses and the Vessel.
   7. The Buyer shall be liable to the Seller for any losses suffered by the Seller arising from the Buyer’s failure to comply with the delivery conditions set out herein. In the event that the Vessel is unable to receive the full amount of the Product(s) set out in the Confirmation the Buyer shall be responsible for the costs in the transportation and discharging of such quantities of Product(s) which were unable to be delivered from the Seller’s delivery vessel, and for any subsequent losses suffered by the Seller as a result (including but not being limited to reductions in quality and loss of bargain).
   8. The Buyer shall ensure compliance with all local port regulations and other applicable laws with respect to delivery. The Buyer shall also ensure that, as of the time of delivery, it has in place all required insurances.
   9. Delivery shall take place during normal Working Hours and deliveries requested outside of this time shall be subject to additional charges details of which shall be made available upon request.
   10. The Seller shall be entitled to deliver the Product(s) in part deliveries.
   11. The Seller shall not be liable for any demurrage or other claims incurred by the Buyer arising from any delays in delivery.
   12. The measurement of the Product(s) delivered to the Buyer shall be measured from the meter of the bunkering barge or shore tank, as applicable.
   13. The Seller shall be under no obligation to provide evidence of delivery to the Buyer.
4. **Title**
   1. Title to the Product(s) shall remain with the Seller until such time as full payment has been received and the Seller shall be entitled to take possession of the delivered Product(s) without further proceedings until such time as the Product(s) have been paid for in full.
   2. Risk in the Product(s) shall pass to the Buyer on completion of delivery.
   3. Until full payment of the full amount due to the Seller has been made the Buyer agrees that it is in possession of the Product(s) solely as Bailee for the Seller, and shall not be entitled to use the Product(s) other than for the propulsion of the Vessel, nor mix, blend, sell, encumber, pledge, alienate, or otherwise dispose of the Bunkers to any third party or other vessel.
   4. Any Product(s) delivered in containers shall be stored separately and distinctly from other goods until used, as permitted by clause 5(c).
   5. In the event that the Product(s) have been mixed with other bunkers/oils on-board the Vessel then the Seller shall have the right of lien to such part of the mix which corresponds to the quantity or net value of the Product(s) delivered.
5. **Sampling**
   1. During the delivery of the Product(s) the Buyer shall arrange for three identical samples of each Product delivered by the Seller to be taken. Where possible the sample should be drawn in the presence of an authorised representative of each of the Buyer and the Seller.
   2. The samples shall be sealed and labelled with the Vessel’s name, date of delivery and be signed for by an authorised representative of the Buyer and the Seller. One set of the samples shall be retained by the Buyer and one set by the Seller, each to be retained for a minimum of 60 (sixty days) after delivery to the Vessel. The third sample shall be retained by the Vessel in accordance with the provisions of MARPOL 73/78, Annex VI. The third sample may only be used for the purposes of confirming the sulphur content of the marine fuel and such other matters as are specifically set out in Marpol Annex V I,Regulation 18.
   3. The samples taken shall be deemed conclusive evidence as to the quality of the Product(s) delivered. No samples subsequently taken shall be admissible as evidence. If any of the seals have been removed or tampered with by an unauthorised person, such sample(s) shall be deemed inadmissible as evidence as to the quality of the Product(s) delivered.
   4. In case of dispute the Sellers’ sample shall be forwarded to an agreed independent laboratory for final and binding analysis. The seal must be breached only in the presence of both parties unless one/both in writing have declared that they will not be present and both parties shall have the right to appoint independent person(s) or institute(s) to witness the seal breaking.
6. **Price**
   1. The price stated in the Confirmation remains subject to change up until the time of delivery. In the event that the Seller intends to change the price stated in the Confirmation then it shall notify the Buyer by email. Should this notification be received outside of normal Working Hours then the notice shall be deemed to be received at 8am on the next Working Day. The Buyer shall have the option of accepting or declining the adjusted price. In the event that the Buyer has not nominated its acceptance or rejection of the new price within 3 hours of receipt then the adjusted price shall be deemed accepted and all other terms of this Contract shall remain unaffected (given the requirement for timely communication the notice requirements of clause 14 shall not apply to notification under this clause 7(a)). For the purposes of this clause 7(a) deemed receipt of the notice shall be the time of transmission unless outside of Working Hours in which case it shall be deemed received at 8am on the next Working Day.
   2. The Buyer shall be liable for any costs in respect of taxes, freight, barges, vehicles, wagons, clean-up, pilotage or port dues and/or any other ancillary charges incurred by the Seller in the sale and/or delivery of the Product(s) and which the Seller may invoice post-delivery.
7. **Payment**
   1. Payment shall be due upon the date specified in the Confirmation, or in the absence of such date prior to delivery.
   2. Payment shall be made in the currency stated within the Confirmation and payment shall be made in full, without set-off, deduction or counterclaim and free of bank charges to the account specified in the Confirmation. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.
   3. Interest shall be payable on all overdue payments at the rate of [8]% over Barclays Bank PLC’s base rate from time to time, compounded monthly.
   4. The Buyer shall be responsible for all costs incurred by the Seller arising from the administration and collection of late payments.
8. **Lien**
   1. The Seller shall have a first priority lien over the Vessel and its bunkers for the payment of the Product(s), interest, ancillary costs incurred in collecting the debt and for any sums owed by the Buyer to the Seller. In no event shall any disclaimer issued by a representative of the Buyer on any delivery note waive or qualify the Seller’s lien over the Vessel.
   2. Without prejudice to any rights otherwise available to the Seller, the Buyer hereby expressly acknowledges the Seller’s right to arrest the Vessel or any other vessel owned by the Buyer under any relevant jurisdiction in order to obtain payment. Any costs incurred by the Seller in enforcing such an arrest shall be for the Buyer’s account.
9. **Liability**
   1. Nothing contained herein shall limit or exclude the Seller’s liability for:
      1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
      2. fraud or fraudulent misrepresentation;
      3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
      4. defective Product(s) under the Consumer Protection Act 1987.
   2. Subject to clause 10(a) the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the supply of the Product(s).
   3. The Seller’s total liability to the Buyer in respect of all other losses arising under or in connection with the supply of the Product(s), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Product(s) delivered pursuant to the respective Confirmation.
10. **Termination**
    1. If the Buyer becomes subject to any of the events listed in paragraph b below, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer.
    2. For the purposes of clause a above, the relevant events are:
       1. the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
       2. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer;
       3. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
       4. (being an individual) the Buyer is the subject of a bankruptcy petition or order;
       5. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that is analogous to any of the events mentioned above;
       6. the Buyer suspends, threatens to suspends, ceases or threatens to cease to carry on all or a substantial part of its business;
       7. the Buyer’s financial position deteriorates to such an extent that in the Seller’s opinion the Buyer’s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
       8. (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
    3. Without limiting its other rights or remedies, the Seller may suspend provision of the Product(s) under the Contract or any other contract between the Buyer and the Seller if the Customer becomes subject to any of the events listed in clause 11 (b.i to clause 11 (b.viii, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
    4. On termination of the Contract for any reason or if the Sellers suspends the provision of the Product(s) the Customer shall immediately pay to the Seller all of the Seller’s outstanding unpaid invoices and interest.
    5. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
    6. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
11. **Claims**
    1. Any claims with regard to the quantity of Product(s) delivered shall be raised immediately upon delivery by way of a letter of protest signed by a Buyer’s representative.
    2. In the event that the Buyer wishes to bring a claim with regard to the quality of the Product(s) delivered by the Seller then the Buyer shall submit particulars of the claim to the Seller within 10 days of delivery, after which time such claims shall be waived. In the event that the independent chemical analysis described in Clause 6.d) does not settle the dispute then the Buyer shall bring legal proceedings within 3 months of its initial letter of protest, and after which time such claims shall be waived.
    3. Should the Buyer wish to bring any other claim then the Buyer shall be required to issue and serve the relevant legal proceedings within 3 months of the date of delivery of the Product(s).
    4. Should the Buyer claim that any equipment has been damaged by the Product(s) then the item shall be made available to the Seller and/or its representative at any reasonable time upon written request by the Seller.
12. **Force Majeure**
    1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
13. **Notices**
    1. Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.
14. **Data**
    1. The Buyer consents to the Seller processing its data contained within the Quotation or Confirmation and to the making available of this data to other third parties for marketing purposes.
15. **Assignment**
    1. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement without the prior written consent of the Seller.
16. **Third Party Rights**
    1. A person who is not a party to this Contract shall not have any rights to enforce its terms.
17. **Severance**
    1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
18. **No Waiver**
    1. A waiver of any right or remedy under this Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
19. **Variation**
    1. Except as set out herein, no variation of this agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.
20. **Applicable Law**
    1. This agreement shall be governed by and construed in accordance with the Applicable Law and any dispute arising out of or in connection with this agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or reenactment thereof save to the extent necessary to give effect to the provisions of this Clause.
    2. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.
    3. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and give notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.
    4. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
    5. In cases where neither the claim nor any counterclaim exceeds the sum of £50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
    6. Notwithstanding the foregoing it is agreed that the Seller shall have the right to bring a claim in any jurisdiction whatsoever against the Buyer in order to seek payment for any Product(s) delivered.